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LETTER

TO THE

SOLICITOR GENERAL

THE SEIZURE OF PAPERS;

BY S. H. WILCOCKE.

VOS QUES INFERIOR EST, QUI MUNDI PENA TENETIS.

SE SANTUM TOLERATE NEFAS, NANC TOLLITE PESTEM.

MONTREAL.

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1891.

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Handwritten:
The Hon. Mr. Justice
of the Supreme Court
1891

THE

COLLECTOR GENERAL

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1881

TO CHARLES MARSHALL, ESQUIRE,

SOLICITOR GENERAL, &c. &c. &c.

QUEBEC.

SIR,

A REMARKABLE feature of the proceedings in my case being the unjustifiable, and, I humbly conceive, illegal, seizure, examination and detention of all my private papers of every description, I beg leave to solicit your impartial perusal and consideration of the following Letter, addressed to the Secretaries of State, which was published in 1763, on the occasion of the seizure of Mr. Wilkes's papers.

You are aware that on the 30th of April, 1763, Mr. Wilkes's house was forcibly entered under a warrant from the Secretaries of State; his doors and locks broken open, his most secret and confidential papers thrown into a sack, put into the hands of common messengers, without a schedule or any security for the recovery of them, and carried to the Secretary of State's office: and that in the following year, when he brought his action against the under Secretary of State, Mr. Wood, very heavy damages were given, and it was declared from the Bench that *the seizure of papers, excepting in cases of high treason, is illegal.*

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"LETTER TO THE SECRETARIES OF STATE, ON THE
SEIZURE OF PAPERS."

"MY LORDS,"

"Many writers have submitted to the public very important reflections on the *privilege of Parliament* and *commitments*, but that great article of *seizing papers* has not, so far as I have observed, been taken into consideration by any of the correspondents of the public."

"Bail will deliver every man from imprisonment, before conviction, for any offence not capital. An illegal commitment may be corrected by the summary interposition of the King's Courts, and even personal restraint, at the worst, can only, to any great degree, affect the single person who suffers it. But I have not yet heard of a Habeas Corpus to redeem papers from captivity. Commissions of gaol-delivery do not extend to them, nor can they petition for trial, in order to force their liberty. It is not he only, whose papers are seized, who is distressed by it, but every person in the least connected with him, and some may, by the most accidental circumstances imaginable, be involved in the consequences. These go to the friend, to the friend's friend, and in short, it is impossible to say what may be the extent of their influence."

"I doubt not but there is some legal method of recovering papers, as well as any other goods which are unlawfully detained from the right owner; but I am sure the remedy must, from the nature of the thing, be very ineffectual, if it was less tedious and troublesome than, I dare say, it is, as well as all other proceedings at law; and the mischief and damages occasioned by the seiz-

ure of papers must, in every case, be very great, and in many, infinite and irreparable."

"Every man who has papers, has his secret and confidential correspondence, his private studies, researches, and pursuits, whether of profit, entertainment or improvement. The merchant has his secrets of trade, the philosopher his discoveries in science. Every accurate man has the impenetrable secret of his circumstances, the state of his affairs. Many have their wills, settlements, and dispositions of their estates sealed up in silence, not to be broken open but with their own heart-strings. These are to be found amongst their papers. A man's riches may be there in things known only to himself; and his poverty may, from thence only appear, the unseasonable discovery of which may involve him in irretrievable ruin. Our honour and fame, our estates, our amusements, our enjoyments, our friendships, *are*, and even our vices, *may be*, there: things that men trust none with but themselves; things upon which the peace and quiet of families, the love and union of relations, the preservation and value of friends, depend. Secrets that may cost a man's life; secrets, (of which there are many) that, though they neither affect life nor liberty, yet some men would rather die than have discovered."

"It is for these reasons that wise men not only keep their papers with the greatest care, but, at convenient seasons, purge their repositories, and destroy those that ought not to be preserved after the immediate purposes of them are answered. They have, above all, a special care, into whose hands their secret papers shall come after they are dead, a precaution that every man owes, not only

to himself, but to his family and his friends, and perhaps to his country."

"Let any person, the most private and least employed in business, study, or correspondence, pause only a moment, and consider if he would choose his closet ransacked, his most private repositories rifled, his papers carried he knows not where, and exposed to he knows not whom. Let him likewise reflect that in this matter every man is dependant upon another in a singular, but unavoidable manner, to an unspeakable and inextricable degree; and that every person may, in a great measure, or to an equal effect, suffer the same inconveniences from the misfortune happening to his friend, as if it had befallen himself: so that, in proportion to the extent of a man's connections and correspondents, is he exposed to this hardship, and to all the mischievous consequences of it."

"What can be more excruciating than to have the lowest of mankind enter suddenly into one's house, and forcibly carry away scrutoires with all one's papers of every kind, under a pretence of law? In the hurry too of such a business, notes, bonds, deeds, and evidence of the utmost consequence to private property may be divulged, torn, lost, or destroyed, to the irreparable injury not only of one, but of many; friends, relations, orphans, to whom he may be a trustee, those who have no other father, friend, or protector, may have their little property put in jeopardy, or annihilated, by the seizure of any man's papers."

"The Parliament, to make private correspondence sacred, has enacted that a single letter shall not, under the highest penalties, be opened at the post-office, without an express warrant in

writing from a Secretary of State, in whom that particular power is lodged, as one of the first ministers of government. What shall we say then when we hear that a member of Parliament has had all his papers seized by virtue of a verbal order of a Secretary of State, whose powers as a Magistrate (in which character only he acts in this instance) are no higher, than those of a justice of peace?"

"The papers have been carried to the Secretary of State's office, and there thoroughly examined. The newspapers have already published some of the privacies contained in them. Is this Law? Is it LIBERTY? Is it GOVERNMENT? Or is it TYRANNY and OPPRESSION? If it is Law, where is LIBERTY? If it is not Law, where then is the VOICE OF LIBERTY?"

"But can there be such a law in this free country? One can not surely read it in the Constitution; and if it is in the Statute book, or in the Record of any Court in the Kingdom, it ought not to remain a moment longer capable of being quoted to disgrace the best form of government, and disquiet the freest people. No Englishman, till he hears it read, or is officially informed of it, can believe there is such a law in this land of liberty. Slavery itself could hardly endure it. It must be the heaviest bondage, even where there is no freedom."

"I ask pardon for not doing administration the justice to name the righteous cause their own advocate assigns for this exercise of power; since it was made use of, (these are his words) "not to entrap or entangle innocence, but manifestly with an intention of discovering and bringing to punishment a daring and dangerous offender."

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A very laudable intention truly! a man's house is broken open and his papers are carried away for the purpose of bringing him to punishment. Some of these papers are supposed to afford materials for a prosecution; others may contain the ground of defence. By producing the former, the accusation is established; by withholding the latter, conviction is ensured. The fate of Algernon Sydney, the "daring and dangerous offender" of his day, is well known. They seized his papers "manifestly with an intention of bringing him to punishment," and in those papers found the means of accomplishing their ends. He was executed for high treason, and the overt act for which he died on the scaffold, was that precious manuscript found in his closet, which never had been published and was not completed, the handwriting of which was not proved, a fiftieth part of it not produced, nor even a tenth part of that allowed to be read at the trial.

"So, what was the pretence of this late violation of rights so sacred in their nature; this invasion of property in a critical point, which comprehends every valuable interest a man can have? A person is suspected of being the author of a printed paper, which, in the judgment of the Secretaries of State, was a seditious libel, and the proof of the fact is to be sifted out of his own papers: for your Lordships have said in your letter which is published, that *such of the papers seized as tend to make out the guilt of the owner, are to be kept and used for that purpose.*"

"If there is a circumstance that can aggravate the injury, which is in itself too great almost to be conceived, it is this use that is to be made of the papers; and nothing can so much add to the

alarm, which the practice of seizing papers must give to every man."

"When a person is brought upon his trial for any offence, he is not bound, nor will any Court suffer him, to give evidence against himself: but by this method, if allowed, though a man's *tongue* is not permitted to bear testimony against him, his *thoughts* are to rise in judgment, and to be produced as witnesses to prove the charge. A man's writings, lying in his closet, not published, are no more than his thoughts, hardly brought forth, even in his own account, and, to all the rest of the world the same as if they yet remained in his breast. When a man's whole papers are seized he is at the mercy of his prosecutors. Some may be used to prove a charge, when others, which are suppressed, would clearly exculpate him from guilt. It was thus in the infamous proceedings which robbed that hero of patriotism, the great Sydney, of his life. Scraps of an unfinished manuscript were the evidence upon which he was condemned, when the rest of that very writing was not produced."

"The rack itself is hardly a more inhuman mode of accusation, or more tyrannical method of proof. Both are equally against the first laws of nature, and nothing can be more unlike the benign spirit of our Constitution."

"In cases of treason papers are seized, though even then it is always done with much circumspection and under many restrictions as to the use to be made of them, but that proceeds upon a quite different principle, a principle of sense and reason. Treason, in the general nature of it, must be the crime of *many*. It implies plots and conspiracies which are carrying on by correspond-

ence, and to be discovered by papers. The safety of the State, which is superior to every other consideration, makes it necessary to use all possible means; to unmask the machinations of treason; that the dreadful effects may be prevented. Papers therefore may be seized; and letters intercepted, as arms, ammunition and other warlike stores may be secured; that the sinews of rebellion may be cut. This is the sole reason and the end of seizing papers in a treasonable case.—What does, however, hold in treason, will not take place in other cases. It is treason to compass or imagine (as it is called) or, in plain English, to contrive or intend, the death of the king. It is not, however, murder, *in jure humanum* to intend, or even to attempt, to kill any other man. There is therefore no example to be drawn from what is or may be done in cases of treason, to any other case."

"To the mercy of any government even convicts may have some claim: the benignity of our's, guilt itself can not forfeit. Its suavity and mildness in prosecutions and trials can be denied or interrupted to none. Suspicion or accusation do not annul the rights of innocence, nor rob the subject either of the protection or favour of the laws. The lenity of justice is in England its dignity. Fair trials and gentle prosecutions are the peculiar glory of the country; and no man should be deprived of any benefit or advantage his own silence, or the secrecy of papers not published, can afford, to protect him against conviction. As he can keep his mouth shut, so his privacies ought to be sacred and his repositories secure."

"But, if the partitions of a man's closet (which

is but another bosom) are to be wantonly broke open on every slight pretence or trivial occasion, and what lies there, locked up in secrecy, things that the world never saw, and no man has a right to look upon, are to be exposed at the humour, or malice of every, perhaps, trading justice of peace, let the most partial determine what must be the consequences. There is an end of liberty, an end of confidence amongst mankind. A severe restraint is laid upon friendship and correspondence, and even upon the freedom of thought.— In short a fatal blow is given to the most precious and valuable rights of mankind; to the fairest privileges of society.”

“Every true friend of liberty will therefore anxiously desire to see this question have a fair trial; that he may know exactly how the law stands, and be fully apprised of his danger, so that all may provide against it the best they can. If, on every pretence or suspicion, of offence, or of what, not only a Secretary of State, but the lowest magistrate of the peace, may please to deem one, our houses and our friends’ houses are to be open at all hours, and under all circumstances, to every prowling officer of the Crown, actuated by curiosity, interest, design, or revenge, he will be the wisest man who corresponds the least with others, and the most prudent, who writes very little, and keeps as few papers as he can by him.— None but a fool in this case, will have any secrets at all in his possession.”

“That no such badge of slavery does yet exist in this country, is still believed. That it never may exist will naturally be the wish of every Englishman. The expectations of the sound part of the community are, that if the late most extra-

ordinary, and, it is thought, unprecedented and illegal, *seizure of papers*, produces a legal trial, it will be found to be manifestly against law, and that all the subjects of this kingdom will have the satisfaction to be assured by a judicial determination, that, as *their Houses are their SANCTUARIES, their CLOSETS are the SANCTUM SANCTORUM of that Sanctuary.*

I do not pretend to assimilate my case to Mr. Wilkes's, but there are so many analogous facts in mine, to which the reasonings and arguments that were adduced on that occasion apply, that I trust you will excuse me in briefly enumerating a few of them.

A warrant was issued by a justice of peace to search for *papers* in my house; by virtue of which a number of papers, wholly unconnected with the charges against me, were taken, and have been detained for six months.

The police constable who took my person, seized an immense mass of miscellaneous papers, all my writing desks, and private repositories; some were broke open, and the whole were pried into and examined, and disposed of in a way which no enquiries have yet enabled me satisfactorily to ascertain.

No schedule, inventory or return was, or has been, made of them, nor any security given for their restoration, but a verbal promise, which has been falsified, that such as were not wanted should be given back.

The avowed object of seizing my papers was

the intention of discovering guilt, and of implicating others in the charges made against me.

Letters have been intercepted at the post-office, for the same unjustifiable objects.

My papers so far from having been considered as private or sacred, have been bandied about, scattered indiscriminately on tables and on floors, left open to the inspection, and subjected to the remarks and sneers of constables, bailiffs, bailiffs' followers, clerks and boys; and passages and circumstances connected with the former part of my life, years anterior to the present period, have been the subject of jest and ribaldry among the lowest of mankind.

Amongst the papers that have been seized and detained I deny that there are proofs of guilt; that there are proofs to clear me from accusation, I aver; that there are secrets which, *though they neither affect life nor liberty, I would rather have died than have had discovered*, I allow; that even my vices and failings (and who has not some darling secret vice or failing) are exhibited in them, I admit; secrets of thought and of conduct such as not *any man has a right to look upon*, and which, being such as no law has a right to take cognizance of, no colour of law has a right to expose.

Yet these have been industriously raked out, and, though not published in the papers, have been retailed and propagated, communicated to *friends*; and even, in order to resist actions brought for false imprisonment, put on the fyles of the Court of King's Bench.

Although none of these papers can, I am confident, be made any use of, in support of the criminal allegations against me, they may be, and

are, made use of in the civil proceedings which are at the same time pending; and the withholding of many of them, is the withholding of proofs that ought to be brought forward in support of actions that have, or may be, instituted for certain illegal seizures of property, and other outrages committed in the course of these proceedings.

Wills, settlements, deeds, assignments, bonds, policies of insurance, accounts, receipts, certificates, &c. private correspondence, literary papers, unfinished works, poetry, diaries, journals, have all been swept away as if by an indiscriminating besom; and the interests and feelings of others are as deeply injured as my own. I may be perhaps allowed to say too, with a consciousness of some talent, and of considerable means of observation, that, my literary gleanings for upwards of twenty years thus rent from me, and in "confusion worse confounded," may in some measure be considered as a loss that affects not myself alone; and that a mass of information respecting Canada, which I had assiduously collected, and had hoped to have embodied in a shape fit to present to the British public, will now be consigned to unprofitable oblivion.

Leaving the further analogies and applications that occur in these matters, to your consideration,

I have the honour to be,

Sir,

Your most obedient servant,

S. H. WILCOCKE.

Montreal, 19th April, 1821.

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